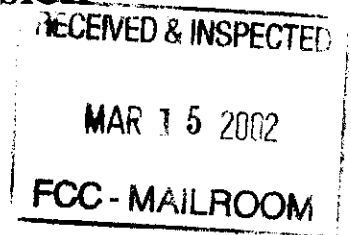


Before the  
**Federal Communications Commission**  
Washington, DC 20554



In the Matter of )  
 )  
Petition for Declaratory Ruling ) PR Docket No. 92-257  
Concerning the Requirements of )  
Ordering Clause ¶ 88 of the )  
*Fourth Report and Order and Third* )  
*Further Notice of Proposed Rule Making* )  
PR Docket No. 92-257 )

To: Chief, Wireless Telecommunications Bureau

**Petition for Declaratory Ruling**

**Expedited Response Requested**

**Background**

I, Warren C. Havens ("Havens"), hereby submit a Petition for Declaratory Ruling (the "Petition") regarding the above captioned matter.

The Petition is submitted under §1.2 of the Commission rules to remove uncertainties reflected in the questions posed in the Petition.

I request expedited response since I hold six AMTS licenses and need to know the requirements and allowances of the above-captioned paragraph 88 including for planning and placing into operation my AMTS licenses. The construction deadline for these licenses is July 13, 2002 for all but one of these licenses.

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**Facts to be Assumed,**  
**and thereupon,**  
**Questions Posed in the Petition**

The relevant background facts and the questions posed in the Petition are contained in Exhibit 1 below, an email from Havens and Keith Fickner of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch. *These facts are further described below.*

Exhibit 2 below contains a response (the underlined part) from Mr. Fickner to the email from Havens contained in Exhibit 1 noting that Havens can submit a Petition for Declaratory Ruling regarding the questions posed in the email in Exhibit 1.

These facts posed are presented for the sole purpose of this Petition. Accordingly, I do not ask in this Petition for a finding or confirmation of accuracy or completeness of these facts in their historical context.<sup>1</sup> Rather, I ask that these facts be *assumed* so that the Commission can respond to the questions posed for the Petition's purposes stated above.

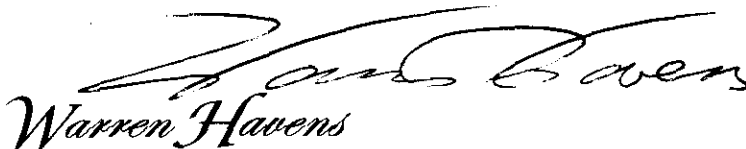
*The facts noted in Exhibit 1, to be assumed as noted above, are further described as follows:* 1) Assume that the "Notices" were reports to the FCC of actual operations of the subject AMTS stations, not merely indications of possible future operations or testing of some kind. 2) Assume such operations were not mere token operations in terms of: the duration of such operations, the amount of licensed spectrum used in such operations, or other substantive terms. 3) Assume that the increases in transmit antenna height, and the changes in coordinates

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<sup>1</sup> While the accuracy and completeness of these facts as they relate to Mobex is not a subject of the Petition, it is the Mobex Notices and Actions (as defined in Exhibit 1) that give rise to the questions posed in this Petition. Thus, it is relevant to pose these questions referencing this Mobex involvement: they are based upon what I understand, from FCC records, to be actions

of the transmit station location, were not accompanied by any other changes in the technical operating limits set forth on the subject licenses (transmit power level, type of transmit antenna, etc.). 4) Assume that the Notices, and the operational Actions explained therein (see Exhibit 1), and further described in the above facts to be assumed, were accepted by the FCC; and in this regard, do not consider whether the procedures involved in gaining this acceptance satisfied Commission rules.

Respectfully submitted,



Warren Havens

Warren C. Havens

March 14, 2002

2509 Stuart Street, Berkeley CA 94705

Phone 510 841 2220 Fax 510 841 2226

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taken before and accepted by the Bureau, rather than on speculation as to how the Bureau has implemented the subject paragraph 88.

Exhibit 1

(In the below, several spelling and capitalization errors in the original have been corrected.)

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Forwarded Message:

Subj: **Re par 88, 4th R&O & 3rdFNPRM**

Date: Wednesday, March 13, 2002 4:47:12 PM

From: wchavens

To: KFICKNER@fcc.gov

cc: KKLEPPIN@fcc.gov, jstobaugh@telesaurus.com, rhaller@frci.com

To: Keith Fickner, FCC

cc: Dennis Brown, counsel for Mobex and Regionet, via -day Airborne with receipt verification.

cc: see above, via email

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Mr. Fickner,

Regarding paragraph 88 in the *Fourth Report and Order and Third Further Notice of Proposed Rulemaking*, FCC 00-370, PR Docket No. 92-257, at this time, I have the below questions.

I ask these since the answers relate to my rights and obligations as a holder of AMTS licenses and pending applications.

If you advise that I submit the below questions in a formal petition for declaratory ruling, I may do so, but I would still ask that you respond to the below at this time (understanding that staff opinions are not binding on the Commission) and would point out: 1) I have already been advised by Bureau staff regarding paragraphs 88, 89, and related, and believe it is reasonable for such staff to further advise on these matters by responding to the below (especially since the below involve commission action, not merely staff views: and the basis of such action should be readily explainable by the staff involved), and 2) due to filings I may need or want to make soon, I need such further response at this time, and a formal ruling on a petition for declaratory ruling may take months.

Background Facts

1. After November 16, 2000, Mobex informed the Commission in various letters (that Mobex and the Bureau have deemed to be station activation notices: herein, the "Notices") that it would commence, on or about certain listed dates that were after November 16, 2000, certain actions: station operations (commencement of testing) using increased antenna height and/or different sites (new coordinates) than authorized on the licenses (herein, the "Actions").

2. Kim Kleppinger of the FCC informed my office that the Bureau accepted the Notices, and the FCC records indicate that such stations remain licensed.

3. The Actions described (alleged) in the Notices were taken, and were accepted by the Bureau, without any waiver or forbearance requests or grants, including any related to this paragraph 88.

Questions:\*

1. Did these Mobex Actions and Bureau acceptance thereof involve an "expansion of the station's service area" as described in this paragraph 88?
2. If not, why not?
3. If so, then did this Bureau acceptance not involve an effective forbearance of or waiver of paragraph 88?
4. On whatever grounds the acceptance was made, how was such acceptance in the public interest and consistent with Commission rules and procedures?
5. Will the Bureau extend the same or similar relief to me: with respect to this paragraph 88, acceptance of actions with the same or analogous effect as the Notices and Actions described above?

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\* Note: While I am not in this email dealing with the merits or defects of such Notices and such Actions other than as relate to this paragraph 88, I note that I have pending various pleadings (petitions to deny and applications for review) that deal with such other merits and defects. This email is not part of any restricted proceeding. I am providing to counsel to Mobex a copy of this email, as indicated above, so that he or Mobex can give any input they desire regarding the above questions.

*Warren Havens*



Exhibit 2

In the below email, the pertinent part regarding this Petition is underlined. Item in brackets is added.

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Forwarded Message:

Subj: **Re: FW: Filing Procedure ?s**

Date: Thursday, March 14, 2002 7:23:06 AM

From: KFICKNER@fcc.gov

To: wchavens@aol.com

cc: KKLEPPIN@fcc.gov, rhaller@frci.com, jstobaugh@telesaurus.com

From: KFICKNER@fcc.gov (Keith Fickner)

To: wchavens@aol.com

CC: KKLEPPIN@fcc.gov (Kimberly Kleppinger), rhaller@frci.com, jstobaugh@telesaurus.com

Mr. Havens, you have a right to file withdrawal / waiver requests via 601s. I gave you my opinion on how I believe it's going to be resolved. Ultimately, the Commission, of course, will make the final decision.

Regarding your final e-mail of 3/13, you have a right to file a petition for declaratory ruling. [This email is contained in Exhibit 1 above]

Keith